

122 FERC ¶ 61,295
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Ozark Gas Transmission, L.L.C.

Docket No. RP08-247-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
CONDITIONS

(Issued March 28, 2008)

1. On February 29, 2008, Ozark Gas Transmission, L.L.C. (Ozark) submitted revised tariff sheets¹ to permit Ozark to offer firm and interruptible “backhaul-only” services with a zero fuel retention percentage. Ozark proposes an effective date of April 1, 2008, for the revised sheets. The Commission will accept and suspend Ozark’s revised tariff sheets to be effective April 1, 2008, subject to the conditions set forth below.

I. Filing

2. Ozark proposes to (1) add a new section 2.1(b) to each of Rate Schedules FTS and ITS describing the proposed backhaul-only service; (2) modify its currently effective rates to add the zero fuel retention percentage applicable to backhaul-only service;² and (3) modify its FTS and ITS *pro forma* service agreements to include “check-the-box” options for backhaul-only service and to include the restriction that a backhaul-only customer’s points of receipt must be at downstream locations relative to its points of delivery.

3. Ozark states that customers under its existing FTS and ITS rate schedules can currently obtain backhaul service by requesting a delivery point that is upstream of the customer’s receipt point. However, Ozark states that under the existing tariff, there is no rate incentive for a customer to utilize backhaul service, since a customer would incur the same fuel retention cost as is applicable to forward-haul service. Ozark states that the key feature of its backhaul-only service proposal is a zero fuel retention percentage applicable to backhaul-only service.

¹ See Appendix.

² Ozark’s current tariff provisions relating to fuel retention assess a single charge for both fuel use and lost and unaccounted for gas. See Second Revised Sheet No. 67.

4. Ozark proposes to limit transportation under a backhaul-only service agreement to transportation of gas from receipt points on Ozark's system to delivery points at upstream locations on Ozark's system, subject to Ozark's determination that (1) it has available adequate unsubscribed capacity at the customer's requested receipt and delivery points; (2) enough forward-haul transportation quantities exist on the relevant portion of Ozark's system to offset a customer's requested backhaul quantity; and (3) the customer's requested backhaul quantity will reduce hydraulic loads on Ozark's system. Ozark avers that the rights of its existing firm service customers will not be adversely affected by the proposed backhaul-only service. Ozark proposes the same demand and commodity rates for backhaul-only service as are currently authorized for forward-haul service under Rate Schedules FTS and ITS, including the minimum demand rate of \$0.00 per dekatherm for service under Rate Schedule FTS. Ozark states its backhaul-only service proposal is consistent with similar FERC-authorized services offered by other natural gas companies.³

5. Ozark asserts its proposed zero fuel retention percentage for backhaul-only service is consistent with the treatment of "zero fuel retention" proposals in several Commission orders, where the Commission held it appropriate to not charge fuel retention on transportation movements where no fuel is consumed.⁴ Ozark emphasizes that its proposed backhaul-only services would be limited to transportation that reduces overall hydraulic loads and fuel consumption on Ozark's system. Therefore, Ozark claims that zero fuel for backhaul-only service is appropriate because such transportation would incur no incremental fuel and would reduce aggregate system fuel consumption.

6. Ozark claims that since lost and unaccounted for (LAUF) gas is not separately stated under Ozark's current fuel retention rates, Ozark has no meaningful basis to assess LAUF gas on backhaul-only transportation. Ozark requests that the Commission not require it to charge an allowance for LAUF gas on backhaul-only service because its proposed backhaul-only service is designed to reduce fuel consumption on its system and to promote overall efficiency. Moreover, Ozark contends that it has determined that LAUF gas on its system was zero during the past two calendar years. In addition, Ozark states that quantities of fuel consumed and LAUF gas for years prior to 2006 do not accurately reflect Ozark's current operations given the significant changes in flow

³ Ozark's filing at n.1 (citing *N. Border Pipeline Co.*, 97 FERC ¶ 61,162 (2001); *Tenn. Gas Pipeline Co.*, 85 FERC ¶ 61,264 (1998)).

⁴ See *id.* at n.2 (citing *Gulf S. Pipeline Co.*, 111 FERC ¶ 61,463 at P 24 (2005); *Miss. River Transmission Corp.*, 98 FERC ¶ 61,119 at 61,352; *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,378 at 62,574 (2002); *Williams Natural Gas Co.*, 75 FERC ¶ 61,023 at 61,075 (1996)).

patterns Ozark has experienced due to development of Fayetteville shale gas production in Arkansas. Therefore, Ozark argues that its proposal not to charge an allowance for LAUF gas on backhaul-only service is distinguishable from cases requiring pipelines to charge for LAUF gas even though the transaction may be exempt from fuel charges.⁵

7. Ozark states it conducted an open season in February 2008 soliciting offers from existing customers interested in converting portions of their firm service forward-haul entitlements to backhaul-only service. Ozark received responses from several customers interested in such service conversion to be effective April 1, 2008. Therefore, Ozark requests that the Commission accept its proposed tariff sheets in advance of April 1, 2008.

II. Notice and Protests

8. Notice of Ozark's filing was issued on March 5, 2008. Interventions and protests were due March 12, 2008, as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214,⁷ all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No parties protested Ozark's filing.

III. Discussion

9. The Commission finds that Ozark's filing for backhaul-only service is just and reasonable, subject to the conditions described below. In addition to granting customers greater flexibility, Ozark's proposal will allow Ozark to utilize its system capacity more efficiently. The lack of protests also signals to the Commission that such a service is necessary and feasible on the Ozark system. Accordingly, the Commission accepts Ozark's proposal, subject to the conditions set forth below.

10. Ozark proposes to offer firm and interruptible backhaul-only service with a zero fuel retention percentage. There are two components to a fuel charge such as this – fuel use and LAUF gas. Ozark states that it is appropriate to have a zero fuel use component

⁵ See *id.* at n.3 (citing *E. Tenn. Natural Gas, LLC*, 110 FERC ¶ 61,060 (2005) (accepting backhaul services at no fuel charge, but stating that it would not accept zero percentages for lost-and-unaccounted-for gas in the absence of a showing that lost-and-unaccounted-for gas is zero)).

⁶ 18 C.F.R. § 154.210 (2007).

⁷ 18 C.F.R. § 385.214 (2007).

for backhaul-only service because this service consumes no incremental fuel. Ozark further argues that its proposal is consistent with other zero fuel retention proposals approved in prior Commission orders.

11. The Commission does not permit pipelines to discount the charges through which they recover the costs of fuel used in connection with transportation services.⁸ This is because fuel used is a variable cost, and the Commission's regulations do not permit discounts below the variable cost.⁹ However, the Commission does permit pipelines to exempt certain transactions or portions of its system from fuel charges if the pipeline identifies the specific transactions it intends to exempt from fuel charges and demonstrates that those transactions do not require the use of fuel.¹⁰ Once the pipeline has met these conditions, the exempted transactions are then listed in the pipeline's tariff.¹¹ The Commission established these requirements to assure there will be non-discriminatory availability of fuel-exempted transactions and to avoid unwarranted cost shifts to other customers.¹²

12. Here, Ozark does not identify specific transactions or points to be exempted from fuel use charges, and the Commission recognizes that under Ozark's proposal, all points on Ozark's system used for backhaul transactions will be exempted from fuel use charges. However, the Commission finds Ozark has failed to make a specific showing to demonstrate that no fuel will be used for its backhaul-only service. As a result, the Commission finds that Ozark has not fully justified its proposed zero fuel retention, absent a fuller demonstration that no fuel will be used in providing its new backhaul-only service. Accordingly, within 30 days of the date this order issues, Ozark must make a compliance filing demonstrating how all the backhaul transactions on its system that are proposed to be exempt from fuel charges will, in fact, not use fuel.

⁸ *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199 at P 19 (2005).

⁹ *Id.* at n.16 (explaining that Order No. 436 provides that it is impermissible for a pipeline to provide service at a rate that would not allow it to recover the variable costs of the service and that this policy is now codified in section 284.10(c)(4) of the Commission's regulations, which states that a pipeline's minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies.").

¹⁰ *Id.* at P 19.

¹¹ *Id.*

¹² *Id.*

13. Ozark also proposes not to charge an allowance for LAUF gas for backhaul-only service. Ozark argues it has no meaningful basis to assess LAUF gas on backhaul-only transportation because LAUF gas is not separately stated under Ozark's current fuel retention rates. Ozark further asserts that for the past two calendar years LAUF gas on its system was zero. Finally, Ozark contends the Commission should not consider LAUF gas data for years prior to 2006 because it does not accurately reflect Ozark's current operations given development of Fayetteville shale gas production in Arkansas.

14. While the Commission has approved rates that exempt shippers from fuel use charges for backhauls on the basis that backhauls do not require compression fuel, the Commission has required pipelines to charge all shippers at least the LAUF gas component of the fuel charge, even in cases where no fuel use component is charged.¹³ In *MRT*, the Commission rejected the pipeline's proposal to exempt shippers from charges for LAUF gas in certain transactions that did not require compression. The Commission found that, similar to fuel use charges, the charge for LAUF gas was a variable cost, and so it could not be discounted. The Commission stated:

A pipeline may exempt a customer from such a charge only by showing that no gas is lost or unaccounted for in connection with service to that customer. However, by the very nature of lost and unaccounted for gas, it is virtually impossible to detect with any certainty which customers account for the quantities of lost and unaccounted for gas.¹⁴

15. The Commission finds that Ozark has not demonstrated why backhaul service on its system should not be allocated costs or revenues related to LAUF gas variations that are not attributable to fuel use. Ozark states that for the past two calendar years LAUF gas on its system has been zero; however, Ozark provides no support for this assertion. Furthermore, the fact that Ozark does not separately state LAUF gas in its fuel retention rates does not mean that there is no LAUF gas on the system. In the absence of a showing by Ozark that gas transported on its system by backhaul will never be lost or unaccounted for, Ozark's proposal not to account for LAUF gas-related backhaul service is contrary to section 284 of the Commission's regulations, and may be unjust, unreasonable, and unduly discriminatory.

¹³ *E. Tenn. Natural Gas, LLC*, 110 FERC ¶ 61,060 (2005) (citing *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (*MRT*)); *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,378; *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120; *Reliant Energy Gas Transmission Co.*, 100 FERC ¶ 61,290; *ANR Pipeline Co.*, 99 FERC ¶ 61,240 (2002)).

¹⁴ *MRT*, 98 FERC at ¶ 61,353.

16. Accordingly, within 30 days of the date this order issues, Ozark must (a) show that backhaul-only service on its system will cause Ozark to incur no gas losses; or (b) make an alternative proposal assessing projected charges for LAUF gas for FTS and ITS backhaul-only service.

17. Furthermore, the Commission finds that it is not clear what, if any, LAUF gas percentage is included in Ozark's current fuel reimbursement percentages for services on its system. Accordingly, within 30 days of the date this order issues, Ozark must (a) provide reasons and explanations showing that all its services cause Ozark to incur no gas losses; or (b) separately set forth the LAUF gas percentages for all services on its system. If the reasonable LAUF projection is zero or *de minimis*, the separately stated LAUF component may reflect that, with adequate support.

18. The Commission's policy regarding tariff filing suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.¹⁵ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹⁶ Such circumstances exist here where existing rate schedules are to be modified consistent with Commission precedent to provide greater service flexibility. Therefore, the Commission will accept and suspend the proposed tariff sheets, to be effective April 1, 2008, subject to the conditions of this order.

The Commission orders:

The proposed tariff sheets are accepted and suspended to become effective April 1, 2008, subject to the conditions set forth above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (imposing five-month suspension).

¹⁶ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (permitting minimum suspension).

APPENDIX

**Ozark Gas Transmission, L.L.C.
FERC Gas Tariff, Original Volume No. 1
Tariff Sheets conditionally accepted effective April 1, 2008**

Seventh Revised Sheet No. 13

First Revised Sheet No. 14

Original Sheet No. 14A

Original Sheet No. 14B

First Revised Sheet No. 39

Original Sheet No. 39A

First Revised Sheet No. 120

First Revised Sheet No. 127

First Revised Sheet No. 128

First Revised Sheet No. 140

First Revised Sheet No. 146

First Revised Sheet No. 147